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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,079	03/01/2002	Ken Kerry	01-10053	4278

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EXAMINER

AMERSON, LORI BAKER

ART UNIT PAPER NUMBER

3764

DATE MAILED: 09/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/090,079

Applicant(s)

KERRY, KEN

Examiner

L. Amerson

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 8,9 and 12-16 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29 is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-16, 18-24, 26-28 is/are rejected.
- 7) ☒ Claim(s) 11, 17 and 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/1/02 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Species III in the reply filed on April 26, 2004 is acknowledged.

### ***Claim Objections***

2. Claim 5 objected to because of the following informalities: line 3, "slidable" should read --slideable--. Appropriate correction is required. Note: Review these and other such errors throughout the disclosure and claims.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

- a. Claims 1-5, 7, 10, 19-24 and 26-28 are rejected under 35 U.S.C. 102(a) as being anticipated by Pollock. Pollock discloses a device having a hand-gripping member (54) positioned above a users head when the user is on his back and the member is capable of side-to-side motion, front-to-back, diagonal, rotational or combination thereof relative to the user and the motion is confined to a plane parallel to a surface on which the device is supported (fig. 14). As to claims 2-3, the language has not been given patentable weight because the recitations are purely functional in nature and do not recite any structure. As to claim 4, further comprising a frame (col. 2, lines 44-45). As to claims 5 and 22, further

comprising at least one guiding member (16) supported on the frame and a slideable member (12) coupled to the guiding member, where the grip member is coupled to the slide member. As to claim 7, the slide and guide member comprise smooth surfaces (fig. 14) for enabling the slideable member to slide on the guiding member. As to claims 10 and 23, the guide member is movably coupled to the frame. As to claim 19, further comprising resistance elements (14). As to claim 20, see the paragraph for claim 1. As to claims 26-28, Pollock discloses a exercise steps comprising laying on a flat surface, gripping handles positioned above the person's head, said handles being mounted on a stationary frame, and capable of front-to-back, side-to-side, diagonal, circular, or semi-circular motion or a combination thereof and moving the upper body according to a pattern comprising front-to-back, side-to-side, diagonal, circular, or semi-circular motion or a combination thereof while keeping the arms extended at the same length while exercising. As to claims 28, see the paragraph for claim 1.

**b.** Claims 1-7, 10, 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen. Pollock discloses a device having a hand-gripping member (25). Regarding the language, "positioned above a users head when the user is on his back and the member is capable of side-to-side motion, front-to-back, diagonal, rotational or combination thereof relative to the user and the motion is confined to a plane parallel to a surface on which the device is supported" has not been given patentable weight because the recitations are purely functional in nature and do not recite any structure. As to claims 2-3, the language has not

been given patentable weight because the recitations are purely functional in nature and do not recite any structure. As to claim 4, further comprising a frame (12). As to claims 5 and 22, further comprising at least one guiding member (121) supported on the frame and a slideable member (21) coupled to the guiding member, where the grip member is coupled to the slide member. As to claim 6, the guide member is a bar (fig. 1). As to claim 7, the slide and guide member comprise smooth surfaces (figs. 6-7) for enabling the slideable member to slide on the guiding member. As to claim 20, see the paragraph for claim 1. As to claim 21, the grip member is mounted to the frame via a slideable attachment (fig. 1).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

c. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pollock. Pollock discloses hand-gripping member comprising handles but does not teach adjustable handles. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Pollock by providing adjustable handles to vary the distance between them for different sized users.

Adjustability, where desirable, is a modification that is within the skill of the art. In re Stevens, 212 F.2d 197, 101 USPQ 284 (CCPA 1954).

5. Claims 11, 17, 25 and 28 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 29 is allowed.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (703) 306-5576. The examiner can normally be reached on Mon.-Fri from 8-5 p.m. Interviews Tue. and Thur..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on (703) 308-2698. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read "L. Amerson". The signature is written in a cursive, flowing style with a prominent initial "L" and a trailing flourish.

L. Amerson